

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

OSCAR A. GARCIA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. C-04-555
	§	
MEDTRONIC, INC., ET AL.,	§	
	§	
Defendants.	§	

ORDER ADDRESSING MOTIONS TO EXCLUDE EXPERT TESTIMONY

On November 22, 2005, the Court conducted a Daubert hearing to consider Defendants' Motions to Exclude Expert Testimony of Dr. Linda Peeno, Dr. Scott Shapiro, and Dr. Mark Thornton. This Order memorializes the rulings made by the Court at the hearing.

1. Plaintiff's counsel informed the Court that he had been unable to locate Dr. Linda Peeno, and withdrew her as an expert witness. Defendants' Motion to Exclude Expert Testimony of Dr. Peeno is therefore MOOT.
2. Plaintiff's counsel also motioned the Court to allow designation of another expert witness, in substitution of Dr. Peeno. The Court hereby GRANTS the motion. Plaintiff has until December 15, 2005 to designate a new expert and to make the required expert disclosure pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure.
3. The Court DENIES Defendants' Motions to Exclude Expert Testimony of Dr. Shapiro and Dr. Thornton. However, the

testimony at trial of Dr. Shapiro and Dr. Thornton will be limited to those opinions expressed in the September 21, 2005 timely filed Rule 26(a)(2) Disclosure of Expert Testimony, with the exception that Dr. Thornton will be allowed to testify to prevention of decubitis ulcers.

4. Defendants' motion to designate dismissed Defendants' Experts will be carried forward.

SIGNED and ENTERED on the 23rd day of November, 2005.

A handwritten signature in black ink, reading "Janis Graham Jack". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Janis Graham Jack
United States District Judge